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In re Application of
Joseph KURIACOSE et al.
Application No. 09/672,523
Filed: September 27, 2000
For: METHOD AND SYSTEM TO
FACILITATE ORDERING OF AN
ITEM

DECISION ON PETITION FOR THE EXERCISE OF SUPERVISORY AUTHORITY UNDER 37 CFR § 1.181

This decision is in response to Applicant's petition under 37 CFR 1.81(a)(3) filed January 18, 2010 requesting the exercise of supervisory authority.

The petition is **DISMISSED**.

The petition seeks remedy in the form of:

- 1) the exercise of supervisory authority to provide guidance to the identified Group to correct what are believed to be incorrect interpretations in the Group regarding 35 USC § 251 and MPEP § 1412 addressing the requirements of that statute, and specifically the inapplicability of the prohibition against recapture in the circumstance presented in the present application, wherein claims have been submitted for an invention not claimed the original patent; and
- 2) a determination that the pending claims are not barred under 35 USC § 251 by the prohibition against recapture. This proposed remedy is offered at page 1 of the instant Petition.

Discussion

A review of the file does not reveal that the Examiner has acted inconsistently with guidance already provided by the Office regarding 35 USC § 251 and MPEP § 1412. Accordingly, further guidance, particularly as it applies to the circumstances present in the instant application, is not warranted.

Decision on Petition

A further review of the file and the instant petition reveals that the petition is directed to an appealable matter rather than a petitionable matter. The refusal to grant claims because the subject matter as claimed is considered unpatentable is called a "rejection". In the instant case, the Examiner has refused to allow claims based upon a rejection of claims 10-11, 13-24, 27, 33, 38, 39, 41-43, 45-55, 57, 63, 260, and 262 under 35 USC 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. Rejections involving the merits of the claim are subject to review by the Board of Patent Appeals and Interferences and will therefore not be reviewed by the Director. MPEP 706.01.

The shortened statutory period set in the Office action delivered by electronic notification on November 18, 2009 continues to run as set forth in that Office action.

Any questions concerning this decision should be directed to Jeffrey A. Smith at (571) 272-6763.



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WC/jas: 02/09/2010

